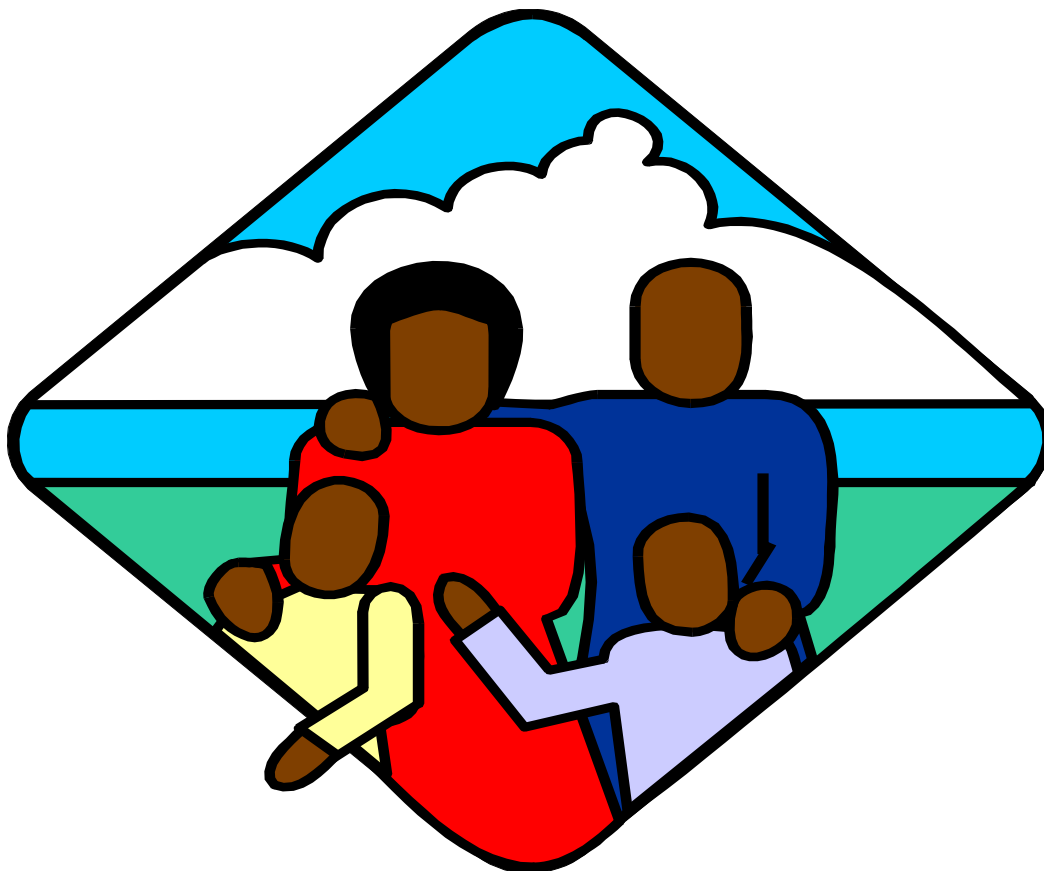


SOUTH DAKOTA SURROGATE PARENT MANUAL



A HANDBOOK FOR PARENTS AND EDUCATORS

**Department of Education and Cultural Affairs
Office of Special Education
700 Governors Drive
Pierre, SD 57501**

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A. INTRODUCTION AND APPLICABLE FEDERAL AND STATE MANDATES

The 1997 Amendments to the Individuals with Disabilities Education Act (IDEA 1997) requires school districts to protect the rights of a student with disabilities whenever the parents of the student are not known. Whenever the whereabouts of the parents cannot be discovered after reasonable efforts, or when the student is a ward of the state, the school district must assign an individual to act as a surrogate parent for the student.

The State of South Dakota, complying with the requirements of IDEA 1997 and final regulations published on March 12, 1999, addresses the need for and appointment of an educational surrogate parent via South Dakota Codified Law (SDCL) and the Administrative Rules of South Dakota (ARSD).

Federal statutes and state mandates specify that a surrogate parent has the same rights and responsibilities as a natural parent with regard to educational decisions for the identification, evaluation, program placement and provision of a free appropriate public education for a student with disabilities. Included in these rights is the right to receive written prior notice, give or refuse consent, review educational records, and the right to a full explanation of all procedural safeguards available under the Individuals with Disabilities Education Act as amended. The surrogate parent is afforded the same considerations as the natural parent. As with a natural parent, a surrogate parent is an equal partner with all other professionals in the educational decision-making process. These requirements apply whenever the whereabouts of a student's parents cannot be located, when the student is a ward of the state, or when the student is in the care and custody of a state-supported program.

The South Dakota Office of Special Education is charged with the responsibility of ensuring that the individual rights of all students with disabilities are protected, including those students without parents. The Office of Special Education, in ensuring compliance with all state and federal mandates governing the education of children with disabilities, conducts oversight activities in all programs that provide special education services to students with disabilities. The protection of the rights of children with disabilities is included in that activity. This manual will serve to provide assistance to parents and educators who are in the process of implementing an effective surrogate parent program.

FEDERAL STATUTES:

**Public Law 105-17, IDEA 1997
Final Regulations issued March 12, 1999**

**PART 300– Assistance To States For The Education Of Children With Disabilities; and
PART 303– Early Intervention Program For Infants and Toddlers With Disabilities**

**34 CFR 300.20 Parent. and
34 CFR 303.19 Parent**

- (a) *General.* As used in this part, the term parent means-
- (1) A natural or adoptive parent of a child;
 - (2) A guardian but not the State if the child is a ward of the State;
 - (3) A person acting in the place of a parent (such as a grandparent or stepparent with whom the

- child lives, or a person who is legally responsible for the child's welfare); or
- (4) A surrogate parent who has been appointed in accordance with §300.515.
- (b) *Foster parent.* Unless State law prohibits a foster parent from acting as a parent, a State may allow a foster parent to act as a parent under Part B of the Act if-
 - (1) The natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law; and
 - (2) The foster parent-
 - (i) Has an ongoing, long-term parental relationship with the child;
 - (ii) Is willing to make the educational decisions required of parents under the Act; and
 - (iii) Has no interest that would conflict with the interests of the child.

34 CFR 300.515 Surrogate parents.

- (a) *General.* Each public agency shall ensure that the rights of a child are protected if-
 - (1) No parent (as defined in §300.20) can be identified;
 - (2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or
 - (3) The child is a ward of the State under the laws of the State.
- (b) *Duty of public agency.* The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method-
 - (1) For determining whether a child needs a surrogate parent; and
 - (2) For assigning a surrogate parent to the child.
- (c) *Criteria for selection of surrogates.*
 - (1) The public agency may select a surrogate parent in any way permitted under State law.
 - (2) Except as provided in paragraph (c)(3) of this section, public agencies shall ensure that a person selected as a surrogate-
 - (i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;
 - (ii) Has no interest that conflicts with the interest of the child he or she represents; and
 - (iii) Has knowledge and skills that ensure adequate representation of the child.
 - (3) A public agency may select as a surrogate parent a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the standards in paragraphs (c)(2)(ii) and (iii) of this section.
- (d) *Non-employee requirement; compensation.* A person who otherwise qualifies to be a surrogate parent under paragraph (c) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.
- (e) *Responsibilities.* The surrogate parent may represent the child in all matters relating to-
 - (1) The identification, evaluation, and educational placement of the child; and
 - (2) The provision of FAPE to the child.

34 CFR 303.406 Surrogate parents.

- (a) *General.* Each lead agency shall ensure that the rights of children eligible under this part are protected if-
 - (1) No parent (as defined in §303.18) can be identified;
 - (2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or
 - (3) The child is a ward of the State under the laws of that State.
- (b) *Duty of lead agency and other public agencies.* The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This must include a method for-

(1)Determining whether a child needs a surrogate parent; and

(2)Assigning a surrogate parent to the child.

(c)*Criteria for selecting surrogates.*

(1)The lead agency or other public agency may select a surrogate parent in any way permitted under State law.

(2)Public agencies shall ensure that a person selected as a surrogate parent-

(i)Has no interest that conflicts with the interests of the child he or she represents; and

(ii)Has knowledge and skills that ensure adequate representation of the child.

(d)*Non-employee requirement; compensation.* (1)A person assigned as a surrogate parent may not be-

(i)An employee of any State agency; or

(ii)A person or an employee of a person providing early intervention services to the child or to any family member of the child;

(2)A person who otherwise qualifies to be a surrogate parent under paragraph (d)(1) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.

(e)*Responsibilities.* A surrogate parent may represent a child in all matters related to-

(1)The evaluation and assessment of the child;

(2)Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

(3)The ongoing provision of early intervention services to the child; and

(4)Any other rights established under this part.

SOUTH DAKOTA CODIFIED LAWS (SDCL):

SDCL 13-37-2.1. Surrogate parent defined. As used in this chapter, the term “surrogate parent” means any individual certified by the division of education of the department of education and cultural affairs to act in place of the parent of a child in need of special education when the school district cannot identify or locate the parent or the child is a ward of the state.

SDCL 13-37-27. Surrogate parent acting in place of parent – Immunity – Exceptions. The surrogate parent may act in place of the parent in all matters relating to the identification, evaluation and educational placement of a child in need; and to the provision of a free appropriate public education to the child in need. The surrogate parent is immune from suit when acting in the capacity of a surrogate parent except for acts or omissions which are grossly negligent, wanton, reckless or malicious.

SDCL 25-5-7.1. Order for joint legal custody – Factors for court’s consideration. In any custody dispute between parents, the court may order joint legal custody so that both parents retain full parental rights and responsibilities with respect to their child and so that both parents must confer on major decisions affecting the welfare of the child. In ordering joint legal custody, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child’s welfare or may divide those aspects between the parties based on the best interest of the child. If it appears to the court to be in the best interest of the child, the court may order, or the parties may agree, how any such responsibility shall be divided. Such areas of responsibility may include primary physical residence, education, medical and dental care, and any other responsibilities which the court finds unique to a particular family or in the best interest of the child.

SDCL 25-5-7.2. Residential parent to make routine decisions concerning child. During the time a child, over whom the court has ordered joint legal custody to both parents, resides with either parent, that parent shall decide all routine matters concerning the child.

SDCL 25-5-7.3. Denial of access to certain records and information pertaining to minor child prohibited. Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including, but not limited to, medical, including counseling, dental, including orthodontia, optometric and similar health care, and school records, may not be denied to a parent because such parent is not the child’s primary residential parent.

SDCL 25-5-8. Father’s right not superior to mother’s while separated. The husband and father, as such, has no rights superior to those of the wife and mother in regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other.

ADMINISTRATIVE RULES OF SOUTH DAKOTA (ARSD):

ARSD 24:05:13:01. Definitions. Terms defined in § 24:03:01:01 and in SDCL 13-37-1 have the same meaning when used in this article. In addition, terms used in this article mean:

(13) “Parent,” a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with this article, but not the state if the child is a ward of the state;

ARSD 24:05:30:15. Surrogate parents. Each school district shall establish procedures for the assignment of a surrogate parent to ensure that the rights of a child are protected if no parent can be identified and the district, after reasonable effort, cannot discover the whereabouts of a parent or if the child is a ward of the state. At a minimum, a district’s method for determining whether a child needs a surrogate parent must include the following:

The identification of staff members at the district or building level responsible for referring students in need of a surrogate parent;

The provision of in-service training on the criteria in this section for determining whether a child needs a surrogate parent; and

The establishment of a referral system within the district for the appointment of a surrogate parent.

The district superintendent or designee shall appoint surrogate parents.

The district shall ensure that a person selected as a surrogate has no interest that conflicts with the interest of the child the surrogate represents and has knowledge and skills that ensure representation of the child. The district is responsible for the training and certification of surrogate parents and shall maintain a list of persons who may serve as surrogate parents.

A person assigned as a surrogate may not be an employee of a public agency that is involved in the education or care of the child.

A person who otherwise qualifies to be a surrogate under the provisions of this section is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

The district superintendent or a designee is responsible for reporting to the placement committee on the performance of the surrogate parent.

Source: 16 SDR 68, effective October 15, 1989; 21 SDR 39, effective August 28, 1994; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1, 13-37-2.1 13-37-27.

ARSD 24:05:30:16. Continuation as surrogate parent. An individual assigned as a surrogate parent shall continue in that capacity as long as the child meets the following conditions:

Remains eligible for special education or special education and related services;

Meets the criteria for the appointment of a surrogate parent or unless the person appointed as a surrogate parent fails to represent the best interest of the child; and

Remains a resident of the placing district.

Removal of an individual as a surrogate parent shall be accomplished by the district superintendent or

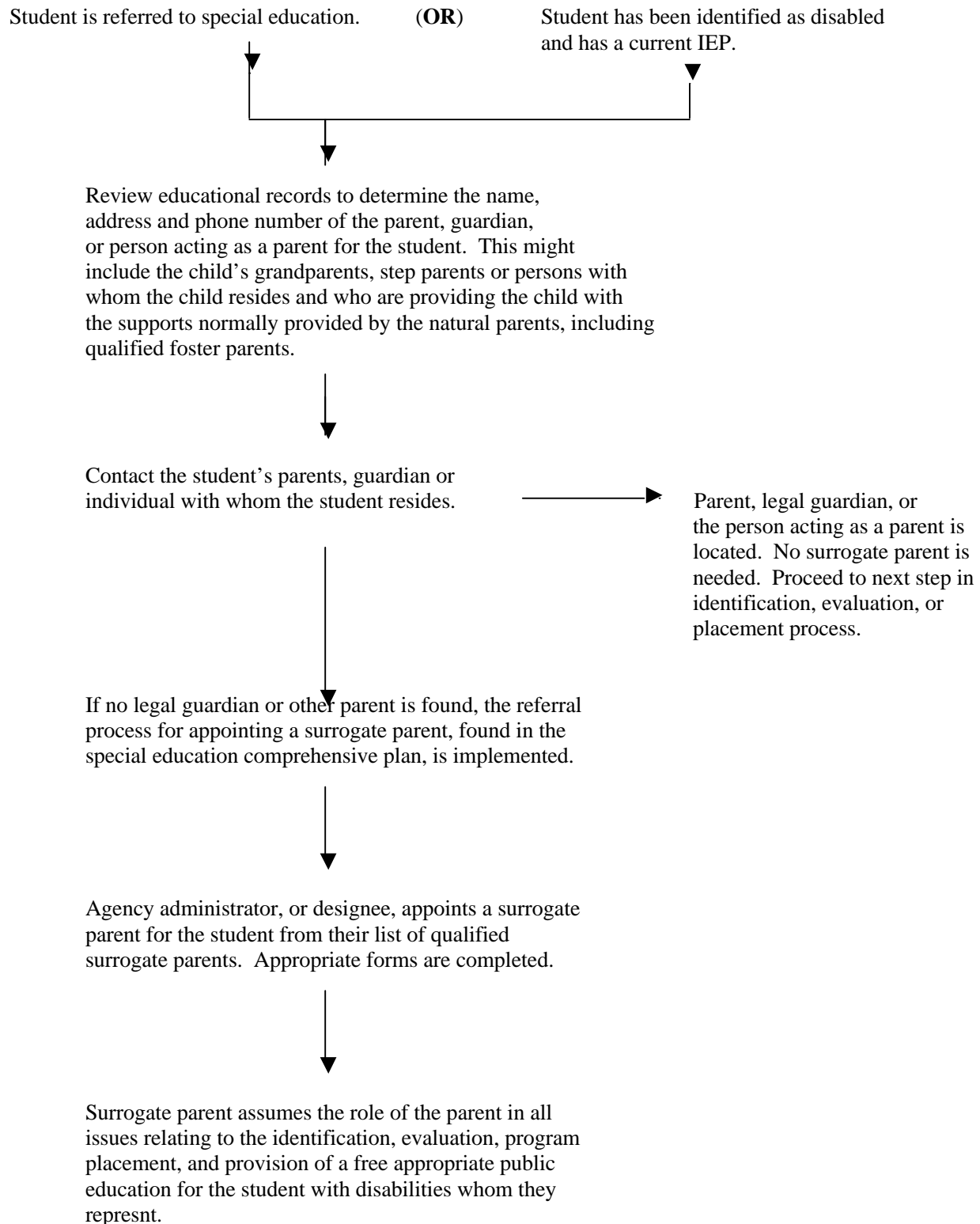
designee.

Source: 16 SDR 68, effective October 15, 1989; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

B. OUTLINE OF SURROGATE PARENT PROCESS



C. IDENTIFYING STUDENTS IN NEED OF A SURROGATE

In accordance with ARSD 24:05:30:15, an educational agency must establish procedures for determining whether a child needs a surrogate parent, including the following:

- 1) The identification of staff members at the agency or building level responsible for referring students in need of a surrogate parent;
- 2) The provision of inservice training on the criteria in this section for determining whether a child needs a surrogate parent; and
- 3) The establishment of a referral system within the agency for the appointment of a surrogate parent.

These procedures are outlined in the agency's comprehensive plan for special education.

A child shall be provided a surrogate parent when:

- 1) A parent or guardian of a student is unknown. The parent/guardian is unknown when the district or agency has no record available to it of the parent or of the appointment of a legal guardian.
- 2) A parent or guardian cannot be located or their whereabouts cannot be discovered after reasonable efforts to contact the parent/guardian regarding special education evaluation, identification, placement or the provision of a free appropriate public education.
- 3) The child is a ward of the state or under the care and custody of a state agency and parental rights have been terminated.

D. RESPONSIBILITY FOR APPOINTING A SURROGATE

In accordance with ARSD 24:05:30:15. Surrogate parents., the district or agency responsible for the provision of a free appropriate public education is responsible for appointment, training and certification of surrogate parents, including maintaining a list of qualified persons who may serve as surrogate parents. Upon determining the need to appoint a surrogate parent, procedures found within the agency's comprehensive plan for special education are followed.

If a student enrolled in a public school is determined to be in need of a surrogate parent, it is the responsibility of the superintendent or designee of the local school district in which the student is enrolled to appoint the surrogate parent.

If a student is enrolled in a state-operated program, placed in a private residential care facility by a public agency or is placed in a correctional facility by the courts and is determined to be in need of a surrogate parent, it is the responsibility of the state-operated program, correctional facility or the residential facility to appoint the surrogate parent.

If a student is under the care and custody of a state-operated program and is determined to be a protected student who needs the appointment of a surrogate parent, persons employed by the state-operated agency involved in the care and custody of the student cannot be appointed as a surrogate parent or act in the capacity of the student's parent. This would apply to persons employed by the Department of Social Services or the Department of Corrections.

E. CRITERIA FOR APPOINTMENT OF SURROGATE PARENT

ARSD 24:05:30:15 states that agencies must ensure that a person selected as a surrogate parent has no interest that conflicts with the interest of the child the surrogate represents and has knowledge and skills that ensure representation of the child.

A surrogate parent shall:

- 1) Be an adult of good character; and
- 2) Have no interest that conflicts with the interests of the student represented; and
- 3) Have sufficient knowledge and skills that ensure adequate representation of the child; and
- 4) Not be an employee of the public or private agency involved in the education or care of the student.

The following criteria are considered when selecting a surrogate parent:

- 1) The surrogate parent should have a cultural and ethnic background similar to that of the student;
- 2) If possible and appropriate the student should participate in the selection of his or her surrogate parent; and
- 3) Consideration should be given to the place of residence of a surrogate parent and the surrogate parents' commitment to the education of a student with a disabling condition.

F. CONTINUATION AS A SURROGATE PARENT

A surrogate parent can remain in that capacity as long as the child meets the following conditions, as outlined by ARSD 24:05:30:17:

- 1) The child is eligible for special education or special education and related services;

- 2) The child meets the criteria for appointment of a surrogate parent or the person appointed as a surrogate parent fails to represent the best interest of the child; and
- 3) The child remains a resident of the placing district.

Removal of a surrogate parent can be accomplished by the district or agency superintendent or designee.

G. RECRUITMENT OF SURROGATE PARENTS

The district or agency is responsible for maintaining a list of qualified persons who may serve as surrogate parents, according to ARSD 24:05:30:15. Locating persons who would be willing to assume the role of surrogate parent involves concerted effort by the agency. It is suggested that the agency develop a plan for volunteer recruitment to assist in their efforts and designate individuals within the agency who will manage recruitment efforts.

Agencies may wish to contact their local Parent/Teacher's Association (PTA) or other parent advisory groups to assist in the process. Local service organizations, such as Kiwanis, Lions Club, etc., may also provide a forum for recruitment. Some agencies choose to make announcements on the radio, television, or in the newspaper regarding the opportunity for volunteers to serve as surrogate parents.

Local Interagency Networks are an ideal source for disseminating information and recruiting surrogate parents. Other sources of volunteers could include a local senior citizen volunteer program or other civic volunteer organizations. Local service organizations, church groups and other community groups are all excellent sources for possible volunteers.

H. SUGGESTIONS FOR TRAINING SURROGATE PARENTS

Agencies providing the special education services are responsible for the provision of training for surrogate parents, in accordance with ARSD 24:05:30:15. The training must ensure that the surrogate parent has knowledge and skills that ensure adequate representation of the child.

The following are areas of suggested training an agency could provide:

- 1) Overview of special education, including:
 - a. Terms and Definitions
 - b. Disabling Conditions
- 2) Overview of state and federal special education laws;

Overview of special education service delivery models;

Understanding of the placement team process;

Understanding of the Individualized Education Program;

Explanation of procedural safeguards, parent rights and informed consent; and

- 7) Awareness of available resources for surrogate parents.

I. RESOURCES FOR SURROGATE PARENTS AND AGENCIES

The following is a listing of organizations that agencies might wish to contact to obtain assistance with parent training and the development of training materials. Please note this list is not inclusive of all available resources, but is merely a list of possible service providers:

Department of Education and Cultural Affairs
Office of Special Education
700 Governors Drive
Pierre, SD 57501-2291
Voice 605.773.3678 TTY 605.773.6302

Parent to Parent
3936 S. Western Avenue
Sioux Falls, SD 57105-6513
605.334.3119
(in-state)

SD Parent Connection
3701 W. 49th Street Suite 200B
Sioux Falls, SD 57106
605.361.3171
(in-state)

SD University Affiliated Program (SDUAP)
Interdisciplinary Center for Disabilities
The University of South Dakota
School of Medicine
414 E. Clark
Vermillion, SD 57069-2390
605.677-.311
(Voice and TTY)

SD Advocacy Project
221 S. Central
Pierre, SD 57501
605.224.8294 (Voice and TTY)
1.800.658.4782

J. RIGHTS OF THE SURROGATE PARENT

Upon their appointment as a surrogate parent, the surrogate has the same rights afforded the natural parent throughout the educational decision-making process. When working with a surrogate parent, all the same procedures and processes must be followed by the agency with regards to identification, evaluation, educational placement of the child, and the provision of a free appropriate public education for the child.

It is important that the agency provide the surrogate parent with all the procedural safeguards available to them. When developing training for surrogate parents, the agency will want to include information on parental rights and the explanation of those rights. It is appropriate to utilize the agency's parental rights brochure when providing notice of procedural safeguards.

K. LIMITS OF SURROGATE PARENT RESPONSIBILITY

SDCL 13-37-27. Surrogate parent acting in place of parent—Immunity—Exceptions., states the following: The surrogate parent may act in place of the parent in all matters relating to the identification, evaluation and educational placement of a child in need; and to the provision of a free appropriate public education to the child in need. The surrogate parent is immune from suit when acting in the capacity of a surrogate parent except for acts or omissions which are grossly negligent, wanton, reckless or malicious.

In general, it is assured that:

- 1) A surrogate parent is exempt from liability for any act or omission performed by her or him while acting as a surrogate parent except for those found to have been committed in a grossly negligent or malicious manner.
- 2) A surrogate parent has no authority or responsibility for the care, maintenance, or financial support of the child which he or she represents. The surrogate parent has no responsibility or authority to approve a placement in a group home or foster home unless the placement is made for educational reasons.

L. RESPONSIBILITIES, TENURE, COMPENSATION AND LIABILITY

RESPONSIBILITIES OF SURROGATE PARENTS:

- A. Participate in surrogate parent training;
- B. Represent the student with disabilities in all education decision-making;
- C. Become thoroughly acquainted with the student's educational history and current program;

- D. Grant or deny permission for evaluation or placement;
- E. Be an active participant in the development and monitoring of the student's Individualized Education Program;
- F. Be familiar with special education programs pertaining to the student; and
- G. When necessary, initiate mediation, complaints, and due process hearings.

TENURE:

- A. Tenure is contingent on the student's need for a surrogate. If a student moves, exits from special education, or is assigned a legal guardian, the surrogate is no longer responsible for that student.

The surrogate will remain in place as long as they fulfill qualifications and are representing the student in educational matters.

A surrogate parent may terminate services by written request to the agency administrator responsible for providing the child with a free appropriate public education.

COMPENSATION:

Surrogate parents are acting as volunteers and as such will be reimbursed for only those expenses allowed other parents under similar circumstances.

LIABILITY:

A surrogate parent cannot be held liable for actions taken in good faith on behalf of the student in protecting the special education rights of the student.

M. QUESTIONS AND ANSWERS

- 1) **Q. How many students can be served by one surrogate parent?**

A. There are no formal limits on the number of students who may be served by each educational surrogate parent. In appointing multiple students to a surrogate, an agency should consider whether or not the surrogates' time limitations will allow him or her to perform the required duties of a surrogate parent.
- 2) **Q. What does an agency do when a student has someone "acting" in the parental role?**

A. According to 34CFR 300.20 and 34 CFR 303.19, the term "parent" includes a natural parent or adoptive parent, a guardian, but not the State if the child is a ward of the State, a person acting in the place of a parent, such as a grandparent, qualified foster parent, or stepparent with whom the child lives, as well as a person who is legally responsible for the child's welfare. In such instances, the appointment of a surrogate parent is unnecessary.
- 3) **Q. When are persons not eligible to serve as surrogate parents?**

A. A person assigned as a surrogate parent may not be an employee of a public agency that is involved in the education or care of the child, because they would be considered to have a conflict of interest.
- 4) **Q. What is meant by "conflict of interest?"**

A. The non-employee requirement of 34 CFR 300.515 and 34 CFR 303.406 prohibits only those employees involved in the education or care of the child from serving as surrogates, not employees of "any State agency." Therefore, if the state employee is not employed by the agency involved in the education or care of the child, he/she would be able to serve as a surrogate parent, providing all requirements for surrogacy are met. This includes having the knowledge and skills to be a surrogate, and having no other interests that conflict with the interests of the child being represented.
- 6) **Q. When is a child a "ward of the state."**

A. A child or student is a ward of the state when the state, under appropriate state law, has assumed the legal responsibility to make decisions concerning the student's education. However, if the parent retains the right to make decisions concerning education, the student is not a ward of the state, but is in the custody of the state and no educational surrogate is needed. The agency would then involve the child's parent whenever the rights of the child need to be protected.
- 7) **Q. If a child is a ward of the state and has a guardian appointed for them, is a surrogate parent appointment required?**

A. If a child, who is a ward of the state, has a guardian who holds that position by virtue of his or her employment with the State, that guardian may not represent the child as a parent under federal law. Those children would require surrogate parents under 34 CFR 300.515 and 34 CFR 303.406. This

applies to employees of the Department of Corrections and Department of Social Services who are involved in the education and care of the child.

8) **Q. Can a foster parent serve as a surrogate parent?**

A. Foster parents are not prohibited from serving as surrogate parents. They must meet all the requirements set forth in ARSD 24:05:30:15, and ARSD 24:05:30:16. It is important to note that because of the individuality of each child's needs, appointment of a surrogate parent must be addressed on a case by case basis.

Additionally, an agency may refuse to recognize foster parents as surrogates if they do not meet the requirements of 34 CFR 300.515 and 34 CFR 303.406. Surrogate parents.

9) **Q. Who is responsible for monitoring surrogate parents?**

A. The agency superintendent, administrator or designee appointing the surrogate parent is responsible for monitoring the surrogate parent's performance.

10) **Q. Can a person who is an employee of a juvenile detention center, an employee of a corrections program, or a social worker from the Department of Social Services act as a surrogate parent?**

A. Employees of agencies involved in the education or care of a child cannot act as surrogate parents because of the conflict of interest requirements of 34 CFR. 300.515 and 34 CFR 303.406. Even if those facilities or agencies are awarded custody of the child, an employee of the agency or facility cannot act in the capacity of parent or guardian of the child for educational purposes.

11) **Q. Can long term foster parents serve as surrogate parents?**

A. Because long term foster parents are recognized as "parent" under 34 CFR 300.20 and 34 CFR 303.19, the issue of surrogacy is not a question. The foster parent has all the rights and responsibilities of the parent and may act accordingly, if criteria established under Federal statute and State law are met.

12) **Q. Can an employee of the agency responsible for care and custody of a child ask the district in which the child is residing to appoint a surrogate parent for the child, if one is required?**

A. Yes, if a state agency has determined that the child's parents are not to be involved with the child, are not to have contact with the child, or parental rights have been terminated.

13) **Q. Can a child be put on a "waiting list" for the appointment of a surrogate parent?**

A. No. If a child with a disability needs to be provided with a surrogate parent the appointment must occur immediately. The surrogate parent is needed to fill the role that would normally be accomplished by the parent, if the parent were available. The reason for the immediate appointment of a surrogate parent becomes clear when parental consent must be provided. The child's parent, or surrogate parent, are the **only** persons who can provide **any** agency with informed parental consent.

- 14) Q. **How do guardianship issues affect a student's need for a surrogate parent?**
- A. The agency responsible for the appointment of a surrogate parent would want to determine the limits of an order providing a student with a guardian. If the student has reached the age of majority and has not had the right of providing consent limited, the student could provide consent as required by an agency seeking consent. If the student's right to provide consent for educational services has been terminated, the student's guardian would need to provide the consent required by any agency seeking informed parental consent.
- 15) Q. **Can an employee of the agency responsible for the care and custody of a child refer a child who might be in need of special education services to the district in which the child resides?**
- A. Yes. The referral must be documented by the person in the school district to whom the referral is made and school district staff must then implement the district's referral process and inform the child's parent, or the person acting as the child's parent, of the decision regarding the referral.
- 16) Q. **Can an employee of the agency responsible for the care and custody of a child act as the parent of the child when a school district seeks to acquire parental consent for the evaluation, placement or reevaluation of the child?**
- A. No. The non-employee requirement of 34 CFR 300.515 and 34 CFR 303.406 prohibits those employees involved in the education or care of the child from acting in the capacity of the child's parent. For purposes of acquiring parental consent for evaluation, placement and reevaluation of the child, a qualified surrogate must be appointed if the child's parent is not located or parental rights are not intact.

N. FOSTER CARE DEFINITIONS

EMERGENCY CARE

Emergency care is a specialized service provided by a licensed family foster home for a period not to exceed thirty days. Emergency families provide care for children for whom immediate removal from their current living situation is required to ensure their protection and safety. Emergency care family foster homes accept children at any hour of the day, with only minimal information about the child in most cases and observe the child's immediate physical and emotional condition throughout the emergency placement in order to provide the social worker an evaluation of the child's needs.

BASIC FAMILY FOSTER HOME CARE

Basic family foster care is twenty-four hour temporary care and supervision of a foster child while permanency plans are developed. This home must be licensed. It includes teaching basic life skills, such as feeding and bathing and provides economic, recreational, social, academic and religious experiences and education which is appropriate for the child's age, mental and physical capacity. Children placed in basic family foster care

may be experiencing normal developmental problems and other problems associated with separation and attachment, but are not generally experiencing special problems beyond these. Basic care foster parents are involved with the worker in the reviews and/or development of ongoing case plans for the child(ren) placed in their home.

The family foster care home should be the least restrictive environment available to resolve the problem(s), meet the ethnic and culture needs of the child, and be within a proximity of the natural parent's home to facilitate visitation.

SPECIALIZED FOSTER CARE

Specialized family foster care is twenty-four hour temporary care and supervision of foster children for whom permanency plans are being developed. The home must be licensed. Children placed in specialized foster care are experiencing special problems beyond those associated with normal child development and/or separation/attachment. Children with physical disabilities, adolescents with behavioral problems, and retarded children are examples of children who might be placed in specialized foster homes. As with basic foster care, specialized foster parents are involved with the social worker in the development and periodic review of an ongoing case service plan. Specialized foster care requires that foster parents receive specialized training related to the needs of the child.

LONG-TERM FOSTER CARE

The continued placement of a child(ren) in a basic family foster home or specialized foster care where the permanent plan for the child(ren) is to reside with the foster home to the age of majority.

When a child has settled into a foster home and developed roots with the family, the provision of long-term foster care may be feasible. This should be considered only when the alternatives of return to natural parents, adoption or guardianship have been justifiably ruled out. Once agreement on this plan is reached, the case plan shall be submitted to the court outlining specifics on long-term care. The court shall agree in order to make the plan conform properly to federal regulations.

Generally a time frame of 12 to 18 months since initial placement will have passed before a permanent plan of long-term foster care is made.

O. SAMPLE FORMS

The following pages contain suggested forms districts may want to utilize when locating and appointing a surrogate parent. District use of these forms is optional, however it is a good way to document and verify eligibility. The forms are not copyrighted, they may be reproduced and altered to fit the needs of your district.

DETERMINATION OF NEED FOR A SURROGATE PARENT

This form is to be used when determining the need for a surrogate parent for a child/student who (1) is receiving special education, or (2) who is suspected of needing special education.

Name of Student _____ Date of Birth _____

Grade _____ Special Education Program _____

Name of School _____ Teacher _____

Student's Primary Language _____ Name of Caregiver _____

Caregiver Address _____

Caregiver Phone (home) _____ (work) _____

Relationship of caregiver to child:

- ☐ Parent
- ☐ Legal Guardian
- ☐ Foster Parent
- ☐ Other Relative (specify) _____
- ☐ Other (specify) _____

Check appropriate box:

- ☐ Parental rights have been terminated (attach verification).
- ☐ The child's parents are not known and, after reasonable efforts on the part of the agency, were not located (attach documentation of attempts to contact parents).
- ☐ The child is a Ward of the State or in the care and custody of a state-operated program. (attach verification)
- ☐ Other (Specify) _____

Based on these findings, a Surrogate Parent:

- ☐ **must be appointed.**
- ☐ **does not need to be appointed.**

Authorized Signature and Title

Date

SURROGATE PARENT ELIGIBILITY DETERMINATION

Name: _____ Date: _____

Address: _____

Home Phone: _____ Work Phone: _____ DOB: _____

Employed by: _____ Position: _____

Please answer the following questions by circling yes or no and responding as indicated:

Yes No 1. Does your employment involve the education of students?

_____ If yes, please describe. _____

Yes No 2. Does your employment involve the care of students?

_____ If yes, please describe. _____

Please list your educational and community experience with children or youth.

1. _____

2. _____

3. _____

Please list two references:

Name: _____

Address: _____

Phone: _____

Relationship to Child: _____

Name: _____

Address: _____

Phone: _____

Relationship to Child: _____

I give permission for the School District/Agency to contact the above named references.

Signature _____ Date _____

(For Office Use Only)

Student represented by this surrogate parent: _____

Applicant's references were checked and both provided supportive information.	Yes	No
Applicant is not employed by an agency involved in the care, custody or education of the child.	Yes	No
Applicant is aware of the educational needs of children and is involved in the community.	Yes	No
Applicant has been or will be trained in the role and responsibilities of a surrogate parent.	Yes	No

This verifies that _____ meets the criteria for appointment as a surrogate parent according to state and federal regulations for the assurance of appropriate representation in all matters relative to the identification, evaluation, and educational placement of the student and in provision of a free appropriate public education.

Authorized Signature and Title

Date

Determination of Need for Surrogate Parent Appointment

This form is to be used when determining need for a surrogate parent for a child who (1) is receiving Early Intervention Services through Birth to 3 Connections in South Dakota, or (2) who is suspected of needing Early Intervention Services through Birth to 3 Connections.

Name of Child _____ Date of Birth _____

Birth to 3 Connections Program _____ Service Coordinator _____

Resident School District _____ Special Education Director _____

Name of Caregiver _____ Primary Language _____

Caregiver Address _____

Caregiver Phone (home) _____ (work) _____

Relationship of caregiver to child:

_____ Parent

_____ Legal Guardian

_____ Foster Parent

_____ Other Relative (specify) _____

_____ Other (specify) _____

Check appropriate box:

☐ The child is represented by parent(s) or by a legal guardian.

☐ The child's parents are unknown. Attach written documentation.

☐ The child's parents have not been located after reasonable efforts on the part of the school district/agency. Attach documentation of attempts to contact parents.

☐ The child is a Ward of the State.

☐ Other _____

Based on these findings a Surrogate Parent:

_____ must be appointed.

_____ does not need to be appointed.

Birth to 3 Connections Signature/Title

Date

School District Signature/Title

Date